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Sukhomoy Biswas and Another Vs Asia Khatun

Court: Calcutta High Court

Date of Decision: April 5, 1933

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 47 Rule 1, Order 9 Rule 9, 151

Citation: AIR 1934 Cal 653 : 152 Ind. Cas. 24

Hon'ble Judges: M.C. Ghose, J

Bench: Division Bench

Judgement

M.C. Ghose, J.
In this case the decree-holders, petitioners in this case, brought a Title Suit in 1927 and obtained a decree in the appellate

Court in 1929 and thereafter in May 1932 took delivery of possession of the decretal land.

2. Thereafter the opposite party filed an application Under Order 21, Rule 100, Civil P.C., complaining that she who was not a judgment-debtor

had been dispossessed of her property. A miscellaneous case was thereupon started. The decree-holders filed their objection and were ready with

evidence on 30th July 1932. But when the case was called on for hearing, the opposite party did not appear and the miscellaneous case was

dismissed for default. Subsequently the opposite party filed an application Under Order 9, Rule 9, Order 47, Rule 1 and Section 151, Civil P.C.,

for setting aside the aforesaid order of dismissal and for restoration of the Miscellaneous Case to its original number. The Court below by an ex

parts order set aside the order of dismissal. But later the decree-holders appeared and stated that they had received no notice and got the order

vacated. Then after hearing both parties the learned Court below set aside the order of dismissal and restored the miscellaneous case to its original

file u/s 151, Civil P.C., holding that Section 151, Civil P.C., had application to the case. Against that order the present rule has been issued.

3. Before the learned Munsif it was contended on behalf of the decree-holders that Section 151 had no application to this case. The learned

Munsif stated that it was well settled that if the Code contains specific provisions which would meet the necessities of the case in question, such

provisions should be followed and the inherent jurisdiction should not be invoked. In the event of dismissal of a case Under Order 21, Rule 100,

the aggrieved party has a direct remedy by way of regular suit Under Order 21, Rule 103. The question was argued whether in the circumstances

the learned Munsif should take action u/s 151, Civil P.C. Two cases have been cited before the Court below; one is a Pull Bench decision of the

Madras High Court: Alagasunderam Piliai v. Pichuvier AIR 1929 Mad. 757, and the other is and decision of this Court, Nabu Sahu and Others

Vs. Kamdev Maity and Others, . The Court below found that the two decisions were contradictory and had followed the decision of this Court

and held that it had jurisdiction to pass an order u/s 151, Civil P.C.

4. In appeal it is urged that the learned Munsif has committed an error of law in deciding the case as above. It is urged that the case of Nabu Sahu

and Others Vs. Kamdev Maity and Others, which was decided by a single Hon''ble Judge of this Court in January 1927 was a case of a special

character and that the trial Court was of opinion that it had made a mistake and thereupon gave relief u/s 151 in a case Under Order 21, Rule 100,

and it was held in this Court that this order in the circumstances was a correct order. It is urged that the facts of this case are different from the

facts of that case and it would be wrong to hold the observation of that ease as applicable to the facts of the present case It was observed by Lord

Halsbury, Lord Chancellor, in the case of Quinn v. Leatham (1901) AC 495 that:

Every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which

may be found there are not intended to be expositions of the whole law but governed and qualified by the particular facts of the case in which such

expressions are to be found.

5. It is also pointed out that in two other cases, namely, Sarat Krishna Bose Vs. Bisweswar Mitra and Others, and Satyendra Nath Choudhury

Vs. Charu Chandra Majumdar and Others, , the same learned Judge sitting in a Division Bench with another Judge held that it was clear law that

where the Code provided an alternative remedy, the Court had no jurisdiction to act u/s 151, Civil P.C. Having regard to the decisions I am of

opinion that the learned Munsif made an error in law in acting u/s 151 in this case.

6. It is also urged that even assuming that the Court had jurisdiction to act u/s 151, the facts of the case do not justify the order which was made by

him. It appears that the opposite party is a woman whose father was looking after the case on her behalf but that when the case was called on for

hearing he was found absent in Court. Afterwards he appeared and said that he had gone out to say his prayers. As the learned Munsif pertinently

observed, the man might have taken steps to have this matter brought to the notice of the Court before going out to say his prayers or he might

have asked a pleader or some other person to respond to the call of the Court. The fact that he did not do so leads to the conclusion that his

excuse was not reasonable. It is also pointed out that the Court examined the said man in the absence of the decree-holders and used that

deposition against the decree-holders, the decree-holders having no opportunity to cross-examine him. I am of opinion that on the facts the order

of restoration was not a correct order. The rule is made absolute with costs, hearing fee being assessed at one gold mohur.